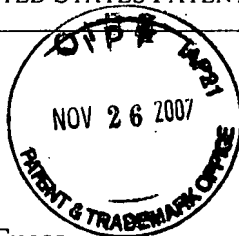


**EXHIBIT A**



UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents  
United States Patent and Trademark Office  
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**SEP 14 2007**

**OFFICE OF PETITIONS**

In re Application of  
BRUCE CARLIN  
Application No. 10/081,841  
Filed: 02/20/2002  
Attorney Docket No. CAR 0002CIP

DECISION ON PETITION

This is a decision on the petition filed March 5, 2007, to withdraw the holding of abandonment.

On April 27, 2006, the Office mailed a final Office action, which set a three-month shortened statutory period to reply. In the apparent absence of a timely filed reply, the Office mailed a Notice of Abandonment on November 14, 2006.

In the present petition, applicant averred that he filed a timely reply to the final Office action in the form of an amendment and a request for an extension of time for response within the first month, accompanied with a certificate of mailing dated August 28, 2006. Applicant requested that the Office withdraw the holding of abandonment in view of the timely submission of the reply. Furthermore, applicant asserted:

Neither Applicant's (1) mailed, nor (2) complete facsimile documents, have apparently correctly timely reached the Examiner in this application.

Applicant requests supervisory review not of the Examiner, who has evidently proceeded on what he has, but of the (apparent) clerical procedures and personnel involved in the scanning and/or movement of documents.

Applicant does not know the exact procedure as to how mailed documents are electronically scanned and entered into the PTO system, but if this is done or supposed to be done by the person also responsible for receiving and for submitting for processing Applicant's check, and if this person is identifiable, then investigation as to why Applicant's initial mailed transmittal was not scanned and entered would seemingly be warranted.

*Petition, p. 3.*

In response to applicant's request the Office investigated the matter and determined that applicant identified an incorrect application, No. 09/801,841, on the present petition, the amendment after final, and the request for extension of time for response within the first month, which directly resulted in the documents being scanned into an incorrect application rather than the intended and correct application, No. 10/081,841. Accordingly, the Office has located the amendment and the request for an extension of time for response within the first month filed on September 6, 2006 (certificate of mailing dated August 28, 2006), but it was not matched with the file due to the incorrect application number. The Office has transferred these documents from the incorrect application, No. 09/801,841 to the present petition. The Office advises applicant to ensure that any future communication regarding the present application clearly identify the correct application, No. 10/081,841, to avoid delay in the examination of the application.

### DISCUSSION

Initially, the Office must determine whether the application is, in fact, abandoned. Namely, the Office must review the present petition to evaluate if petitioner's assertions merely involve the cause of the abandonment. Therefore, where there is no dispute as to whether an application is abandoned because no disagreement exists regarding the sufficiency of the reply or controlling dates, the filing of a petition under 37 CFR 1.181(a) to withdraw the holding of abandonment would be inappropriate. See MPEP 711.03(c)(I). Instead, a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application. See MPEP 711.03(c)(I).

The Examiner has reviewed applicant's reply of September 6, 2006, in the form of an amendment after final. The Examiner issued an Advisory Action Before the Filing of an Appeal Brief, which is enclosed. As stated in the Advisory Action, applicant's reply filed on September 6, 2006, failed to place this application in condition for allowance.

A response to a final Office action may be entered if it places the application in condition for allowance. However, the admission or refusal to admit an amendment after a final rejection will not operate to relieve the application from its condition. Further, the entry of an amendment after a final rejection is not a matter of right.

In the present case, it is regrettable that the Office was unable to match the amendment with the application earlier, and therefore, did not mail an Advisory Action until the date of this decision. Nevertheless, it is clear from 37 CFR 1.116 that abandonment of an application is risked when an amendment is filed after a final Office action. Abandonment takes place by operation of law for failure to timely submit a proper reply to an Office action, not by the mailing of an Office communication, such an Advisory Action.<sup>1</sup> The mere filing of an amendment in response to a final Office action does not save the application from abandonment. Rather, the filing of a Notice of Appeal, a Request for Continued Examination accompanied by a proper submission, or a continuing application in response to a final rejection guarantees the pendency of the application.

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<sup>1</sup> MPEP 711.03(c). See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 299-30 (CCPA 1964); Krahn v. Comm'r, 15 USPQ2d 1823, 1824 (E.D. Va. 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1984).

### CONCLUSION

The application is currently abandoned due to applicant's failure to submit a proper response to the final Office action. Under the circumstances of this case, the application did not become abandoned due to a delay in reviewing the amendment or the mailing of the Advisory Action or any other error on the part of the U.S. Patent and Trademark Office. Accordingly, the petition to withdraw the holding of abandonment is **dismissed**. The application will remain in its abandoned state until applicant files a petition to revive the application accompanied by a proper reply and the appropriate petition fee.

### ALTERNATIVE VENUE

Applicant is encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding final Office action in the form of **either**: (1) a Notice of Appeal (and appeal fee); (2) an amendment that *prima facie* places the application in condition for allowance; (3) a Request for Continued Examination (RCE) and submission (37 CFR 1.114), **or** (4) the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).
- (2) The petition fee as set forth in 37 CFR 1.17(m),
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By FAX:	(571) 273-8300 Attn: Office of Petitions
By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

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Senior Petitions Attorney  
Office of Petitions

Enclosure: Advisory Action